

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35319 of 2014

Arising Out of PS.Case No. -1937 Year- 2013 Thana -SARAN COMPLAINT CASE District-
SARAN

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Ram Naresh Sahani, son of Shri Banshi Sahani, Resident of Village- Barwa Ghat,
P.S. Mashrakh, District- Saran, Presently residing at Champasari More, P.S.
Pradhan Nagar, Siliguri, District- Darjeeling (West Bengal)

.... Petitioner

Versus

1. The State of Bihar
2. Pramod Pandey, son of late Balkrishna Pandey, Resident of Village- Baharauli,
P.S. Mashrak, Distt Saran

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Ram Chandra Sahni, Advocate.
For the State : Mr. Tarun Prasad Mandal, APP.
For the O.P. No. 2 : Mr. Vijay Bardhan Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-08-2017

Heard learned counsel for the petitioner and learned
counsel representing the complainant-opposite party no. 2 as also the
learned A.P.P. for the State.

2. The petitioner, in the present case, is seeking quashing
of the order taking cognizance and issuance of summons dated
24.01.2014 passed in Complaint Case No. 1937/2013 (Tr. No.
4354/2014) by which the learned Judicial Magistrate, Saran has taken
cognizance of the offences under Section 406 IPC read with Section
138 of N.I. Act.

3. Although the petitioner is the signatory of the cheque



but for purpose of quashing of the order taking cognizance, he would submit that prior to filing of the complaint case, the demand notice, which is in the nature of a statutory notice, intimating the signatory of the cheque about the dishonour, was not served upon the petitioner. According to the learned counsel, the petitioner resides in the State of Assam where the notice was not sent rather the notice was sent at the residential address where the petitioner is presently not residing.

4. On the other hand, learned counsel for the opposite party no. 2 submits that the plea of non-service of demand notice is not a *bona fide* plea. He would further submit that in the light of the decision of the Hon'ble Apex Court, in such a situation, the petitioner could have tendered the amount under the cheque at the very first instance after getting the summons from the court of the learned Judicial Magistrate 1st Class, Saran but he has not tendered the amount so far and is contesting the case on its own merit. Thus, according to the learned counsel for the opposite party no. 2, this plea is not available to the petitioner.

5. When confronted with the aforesaid submission of the learned counsel for the opposite party no. 2, the learned counsel for the petitioner was called upon to take a stand as to whether he would be able to deposit the amount under the cheque even at this stage, he is unable to take a stand on this and prays that the matter may be



allowed to be decided on its own merit.

6. In the facts and circumstances stated here-in-above, considering the fact that the petitioner is the signatory of the cheque this Court does not find any ground to interfere with the order taking cognizance at this stage. The application is, therefore, dismissed.

7. However, the petitioner may raise all such pleas, which are available to him, in the court below at the time of framing of charge.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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